

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

MARTHA ANN (TONOS) GARRICK,

Plaintiff,

v.

NO. 3:96CV37-S-A

DIANNA SUE WALTERS STANFORD,

Defendant.

OPINION

The instant case was originally filed in the Circuit Court of Grenada County, Mississippi, and evolved from the allegedly romantic relationship existing between plaintiff's husband and defendant. Plaintiff has premised her claim upon the tort of alienation of affections. The suit's jurisdictional basis upon removal was diversity of citizenship, and the action is presently before the court upon plaintiff's motion to remand.

The facts of the case are relatively simple. Plaintiff, an adult resident of Mississippi, claims that defendant, an adult resident of Tennessee, destroyed her marriage through "zealous, flirtatious conduct," culminating in defendant's continuing adulterous relationship with plaintiff's husband. Although plaintiff and her husband presently remain married, their divorce proceeding is pending in the Chancery Court of Grenada County, Mississippi.

The issue raised by the motion to remand is narrow: whether the court's jurisdiction in this matter is proscribed by the "domestic relations exception" carved out in numerous cases for over 100 years. Although the parties have referenced a variety of conflicting precedent, the 1992 U.S. Supreme Court case of Ankenbrandt v. Richards is dispositive of the issue. Ankenbrandt v. Richards, 504 U.S. 689, 112 S.Ct. 2206, 119 L.Ed.2d 468 (1992). Thus, the law relating to the propriety of litigating alienation of affection actions in federal court is now settled, and prior Fifth Circuit case law is no longer controlling.

In Ankenbrandt, plaintiff sought monetary damages from her husband and his female companion for the alleged sexual abuse of her children. The district court had remanded the diversity-based case pursuant to the U.S. Supreme Court's holding in In re Burrus that "[t]he whole subject of the domestic relations of husband and wife, parent and child belongs to the laws of the States and not to the laws of the United States." In re Burrus, 136 U.S. 586, 593-94, 10 S.Ct 850, 34 L.Ed. 500 (1890). Following the Fifth Circuit's unpublished opinion affirming the district court's order, the U.S. Supreme Court granted certiorari and reversed. Ankenbrandt, 119 L.Ed.2d at 483. The court held that the domestic relations exception only "divests the federal courts of power to issue divorce, alimony and child custody decrees." Id. at 482. Moreover, the court noted that the domestic relations exception in no way applied to the suit against the female companion, because

she stood "in the same position with respect to [the plaintiff] as any other opponent in a tort suit brought in federal court pursuant to diversity jurisdiction." Id. at 483 n.7. Thus, a wife's tort suit against her husband's alleged paramour does not invoke the domestic relations exception to federal jurisdiction.

Furthermore, the Ankenbrandt court explained that abstention pursuant to Burford v. Sun Oil Co. was improper. Burford v. Sun Oil Co., 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed.2d 1424 (1943). Similarly, in the case sub judice, the pendency of the parties' divorce has no bearing on the underlying torts alleged, and the trial will not depend on a determination of the status of the parties. See Id. at 484. Therefore, Burford abstention is inappropriate.

Accordingly, federal subject matter jurisdiction pursuant to § 1332 is proper in this case, and plaintiff's motion to remand is denied.

An order in accordance with this opinion shall be issued.

This the _____ day of May, 1996.

CHIEF JUDGE